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SUMMARY RECORD OF THE 311th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 18 November 1997, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)(continued)

Third periodic report of Spain (CAT/C/34/Add.7)

1. At the invitation of the Chairman, Mr. Ramos Gil, Mr. Cerrolaza Gómez, Mr. Nistral Burón, Mr. Pérez Gómez, Mr. Martín Alonso, Mr. Borrego Borrego, Mr. Pérez-Hernández and Mr. González de Linares Palou (Spain) took places at the Committee table.

2. Mr. PEREZ-HERNANDEZ (Spain), introducing the third periodic report of Spain (CAT/C/34/Add.7), said that the size and composition of his delegation attested to its Government's desire to cover all spheres of the Committee's competence and to contribute as constructively as possible to the Committee's work.

3. Mr. RAMOS GIL (Spain) said that his Government considered fundamental rights to be among the essential values of the Spanish legal system. In that regard, the Committee's involvement was crucial, not only in pointing out irregularities but also in playing a preventive and cautionary role so that violations of the Convention could be avoided.

4. Mr. BORREGO BORREGO (Spain) said that, thanks to his delegation's dialogue with the Committee during the latter's consideration of Spain's initial report, the spirit of the Convention had rapidly permeated Spain, and citizens had become aware of its importance. That process had involved more than a solid body of legislation; it had involved also the appropriate implementation of the law by the courts and increasing public awareness of the serious and repugnant issue of torture. The years that had followed had been productive, and he was proud to report that there was a new sensitivity in Spanish society.

5. The great majority of Spaniards profoundly rejected torture, realizing that the ends did not justify the means, and understood that torture was both unproductive and had grave consequences. Anti-torture education for members of the security forces would be of little effect if those forces were a caste apart from the rest of society but they were currently fully integrated into democratic society and thus could not be tempted to harm human dignity.

6. The increased sensitivity of Spanish society was illustrated by the criminalization of cruelty to animals in the new Penal Code, a measure that would have been unthinkable even a few years previously. That attitude was also apparent in case law. When dealing with cases of torture, the courts had argued in the early years of democracy from the injustice of such attacks on human dignity and the damage they did to the system but such arguments had since been replaced by shorter and more forceful reasoning.

7. As highlighted in the third periodic report, the new Constitution of 1978 had abolished the death penalty but had left possible its application by military courts in wartime, a logical consequence of the country's recent emergence from a totalitarian regime. Sensitivities had changed so

drastically, however, that the Congress of Deputies had unanimously passed Organization Act No. 11 of 1975 which abolished the death penalty in those circumstances also.

8. A second major development covered in the report was the improved definition of torture as an offence, as reflected in the new Penal Code of 1995.

9. Changes in the prison system constituted the third major development. Spain still had a General Prison Organization Act, which had been prepared in the early years of democracy and whose guarantees were so complete as to be difficult to surpass. However, there were ongoing efforts to improve and expand upon work in the normative field. There were, for example, new regulations for transfers of detainees, circumstances which could provide an opportunity for torture if safeguards were lacking. His Government was continuing its efforts to create new, modern prisons that were well suited to the purposes of the sentence being served.

10. The fourth development consisted of the efforts being made to improve the conditions of detention. Rules had been drafted to unify the detention registers used by the various security forces and bodies, containing clear models and abundant information and offering a quick, clear overview of the situation of each prisoner. Efforts were also being made to improve medical examinations. Following consultations with the associations of forensic surgeons and with the Autonomous Communities, the Ministry of Justice had recently issued a new set of rules for the examination of detainees by forensic surgeons. Those rules were based on the work of the United Nations and were clear, specific and conclusive, for which thanks were due to the Committee.

11. Mr. GONZALEZ POBLETE (Country Rapporteur) said that the report went well beyond compliance with the Committee's guidelines. He welcomed the classification of torture as an offence under the new Penal Code, which was consistent with the definition contained in article 1 of the Convention. Its provisions dispensed with the requirement of the "severity" of the physical or mental suffering or pain produced by torture, although the degree of severity could affect the severity of the penalty. That made it possible to penalize as torture acts which did not produce such severe suffering, thereby broadening the scope of the penal protection against torture.

12. The description of the offence included the suppression or diminution of a person's faculties of conscience, discernment or decision-making, or other form of infringement on his moral integrity, even if such acts did not provoke severe suffering. That constituted a broadening of the scope of article 1. The offence was also defined by its purpose, namely, that of obtaining a confession or information, or of punishing a person for an act he had committed or was suspected of having committed. That provision fulfilled the requirements of article 1 only in part, however, since it did not consider intimidation, coercion or discrimination to be a purpose of torture, an omission that would make it impossible to punish acts committed for such reasons. Penal protection against acts of intimidation or coercion was, however, provided by the Penal Code through the offences of threat and coercion. Since the definition of those offences did not refer to the

perpetrators' capacity as public officials, that capacity would be considered an aggravating circumstance and could lead to the imposition of a longer sentence.

13. Degrading treatment infringing a person's moral integrity would come under the offence characterized by and punished in article 175, which related to conduct that, while not included in the definition of torture, resulted in such infringement. That was a noteworthy residual provision.

14. Paragraph 9 of the report indicated the penalties for the various offences against moral integrity. Those penalties were commensurate with the seriousness of the offences and complied with article 4, paragraph 2, of the Convention.

15. Paragraph 10 of the report compared the earlier and new definitions of torture. In addition to the broader scope of the new definition, the increased penalties were noteworthy, as was the revision of the penalty of disqualification from a specific to a general disqualification. That was a significant change, as it meant that the offender, who had previously been disqualified from serving in the department in which he had worked at the time of the offence, was currently prevented from serving in any area of the State administration.

16. With respect to the preventive measures required by article 2, paragraphs 17 and 25-27 of the report set out the situation so clearly as to require no comment. The abolition of the death penalty in wartime was to be welcomed.

17. With respect to article 3, the initial report of Spain (CAT/C/5/Add.21) had cited the Organization Act relating to extradition, which was consistent with that article but which was applicable only to requests for extradition for the purposes of criminal prosecution. Neither the initial report nor the second periodic report provided information on any legislative provisions, administrative regulations and procedures to ensure compliance with the Convention in cases of the expulsion or return (refoulement) of asylum-seekers or refugees.

18. Paragraph 45 of the third periodic report informed the Committee of the publication of new Act No. 9/1994 governing the right of asylum and refugee status, drawing attention to the legal requirement for a prior hearing of the representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the requirement to give the reasons for any decision to reject an application. It also stated that the Spanish regulations on that matter were well known to the Committee, since it had had to deal with communication No. 23/1995 brought against Spain under article 22 of the Convention.

19. In that connection, it should be noted that the Committee's decision that the communication in question was inadmissible implied no decision as to its merits. The State party's report on the facts of the case and the procedures followed had not, in any case, been sufficiently detailed to explain "the Spanish regulations on this matter". As Act No. 9/1994 simply amended former Act No. 5/1984, it was not possible to ascertain clearly

therefrom the legislative regulations and administrative and/or jurisdictional procedures to which asylum-seekers' and refugees' applications were submitted under the new consolidated Act. He would be grateful, therefore, if the delegation would provide information enabling the Committee to ascertain whether those procedures were in keeping with the requirements of article 3.

20. Like the previous report, the third periodic report stated that there were no new developments concerning articles 5, 6, 7, 8 and 9. Since the offence of torture had been defined and was punished by a penalty substantially in excess of the one-year minimum sentence established by the Organization Act on extradition, there was no longer any doubt regarding the admissibility of a request for the extradition of an individual accused of torture, or of his prosecution before a Spanish court if extradition was refused.

21. With respect to article 10, paragraph 53 referred briefly to the inclusion of education regarding human rights and the prohibition of torture in the training of all officials who might commit that offence. Paragraph 55 also referred to the didactic effect of the courts' judgements in cases of torture. When considering the previous reports of Spain, the Committee had noted the inadequacy of information with respect to article 10. He endorsed the comments of his predecessor as country rapporteur in that regard and thought that there must surely be provision for far more training than was referred to in the report. In that connection, he would be interested in hearing more about the assistance being provided by Spanish police officers to various Central American countries that were reorganizing their police forces.

22. With respect to article 11, the representative of Spain had stressed the importance of the new provisions referred to in paragraph 56 of the report. In his own view, however, the establishment of a single detention register for all State security forces and bodies and of detailed rules concerning the transfer of prisoners did not, in itself, appear to ensure compliance with the obligations under article 11, particularly with regard to interrogation, given that most allegations of torture concerned interrogation methods used by State security forces and bodies.

23. With respect to articles 12 and 13, paragraph 7 of the report asserted that, except for isolated cases, "gross" forms of torture had virtually been eradicated. That assertion was effectively reiterated in paragraph 36, on the basis of various judgements of the Constitutional Court rendered in amparo proceedings. Annex 2 to the report included the complete text of five judgements of the Constitutional Court. Two of them found that the force-feeding of hunger strikers did not constitute cruel, inhuman or degrading treatment or a restriction of the appellant's personal freedom. A third found that the use of X-ray equipment to detect the presence of prohibited substances concealed about the detainee's person was not a violation of the right to physical integrity. The fourth found, in the case of a detainee strip-searched for the same purpose, that although the search had not constituted degrading treatment, it violated his right to privacy. The fifth found that the sterilization of persons suffering serious mental disabilities, authorized by article 428 of the Penal Code, was not contrary to the Constitution.

24. None of those judgements related to cases of "gross" torture. Nevertheless, during the reporting period, information contained in the two most recent reports of the Special Rapporteur on questions related to torture and reports by non-governmental organizations (NGOs) contradicted the claim that "gross" forms of torture had virtually been eradicated.

25. In April 1995, the Special Rapporteur had transmitted 17 cases to the Spanish Government. In its reply of 18 July 1995, the Government had reported that, in three cases, medical examination had revealed injuries whose cause was being investigated. The other 14 cases concerned suspected Euskadi Ta Askatasuna (ETA) terrorists. The Government maintained that it was routine for such persons to allege ill-treatment, and that at no stage in their detention had they been ill-treated. In two cases those involved had been released without charge. In two cases the Special Rapporteur reported that the victims had had to be hospitalized, and he had named the hospitals involved; yet the Government's report had made no mention of any attempt to confirm those reports with the hospital authorities.

26. In the three cases in which injuries had been confirmed, the Special Rapporteur had requested, 14 months later, information on the results of the investigations. The Government had informed him that one case had been stayed and filed 20 months after the events. As for the two other cases, which had occurred in 1994, the Government had reported on 26 September 1996 that the proceedings were still pending, 31 months after the events.

27. The Amnesty International reports for the period reported many cases of "gross" torture, and a report of the Association for the Prevention of Torture listed 271 cases of ill-treatment and torture in 1995. Many of those cases concerned immigrants, mostly from African countries, who were subjected to ill-treatment for racial reasons.

28. The report quite rightly referred, in paragraph 57, to the difficulties of conducting a court investigation - difficulties exacerbated, according to a number of reports, by the practice of blindfolding detainees. Moreover, court investigations were generally extremely slow, in violation of article 13 of the Convention. According to the report of the Association for the Prevention of Torture, the average duration of an investigation into allegations of ill-treatment or torture was 5 years and the entire proceedings might last 10 to 15 years. The information given in paragraph 60 confirmed those statistics.

29. According to the same sources, the eradication of "gross" torture was also hampered by the fact that sentences passed on officials convicted of torture or ill-treatment had frequently been nominal. Impunity following pardons, or de facto impunity resulting from a reluctance to impose sentences, deprived criminal sanctions of their deterrent and exemplary effect. An Amnesty International report cited a case in which it had taken 16 months for the authorities to implement sentences confirmed by the Supreme Court.

30. While it should certainly be borne in mind that the Spanish people was frequently subjected to terrorist attacks that should be condemned with the

utmost vigour, it should also be remembered that article 2, paragraph 2, of the Convention stated categorically that no exceptional circumstances whatsoever might be invoked as a justification of torture.

31. Paragraph 61 stated that there was no problem with the implementation of article 14 and the judgements he had been able to study did, indeed, contain express provision for compensation. However, those judgements declared the "secondary" character of State liability, apparently meaning that those affected must first claim redress from the direct perpetrators and could seek redress from the State only if the former lacked the resources to compensate them. He asked for clarification of the nature of State liability in that regard.

32. With respect to article 15, he noted that, during the initial stage of incommunicado detention the detainee did not have the right to be assisted by a lawyer of his choice. Furthermore, according to the same NGO sources, the courts sometimes threw out flawed confessions or statements only to make use of them against co-defendants in the same case.

33. Lastly, he noted that the data supplied by the State Attorney-General's Office, referred to in paragraph 70, concerning judicial proceedings on grounds of torture, were not consistent with the large number of complaints referred to regarding compliance with articles 12 and 13.

34. The CHAIRMAN said he endorsed the concern voiced by other members of the Committee and by various NGOs. While he welcomed the fact that Spain had been quick to amend its legislation in response to the Committee's recommendations, he regretted the fact that its definition of torture still contained no reference to racial discrimination. He also wondered whether the assertion that "gross" torture had been virtually eradicated meant that torture still persisted in subtle forms that were difficult to detect.

35. The Committee welcomed the new legislation in articles 175 to 177 of the Penal Code, which supplemented the definition of torture, and also articles 520 to 517, which constituted an effective means of preventing torture and ill-treatment. He noted, however, that, in the section of the report dealing with article 10, there was no specific reference to the training of doctors.

36. Mr. SØRENSON said he welcomed the third periodic report as a commendable example of the results of cooperation and dialogue with both the Committee and the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT). Nonetheless, he felt compelled to reiterate the view expressed in the report produced by CPT following its second periodic visit in 1994 that it was premature to conclude that torture and severe ill-treatment had been eradicated from Spain. He thus endorsed the questions asked by Mr. González Pobléte and would like to know whether the report issued following the CPT visit in January 1997 had been published yet; if so, he would like to hear the delegation's comments on it.

37. Concerning the three CPT safeguards whereby detainees should have the right to inform relatives of their detention, have access to a lawyer and consult a doctor, he said that the last of those safeguards should not cause

any difficulty, as any doctor visiting a detainee who had exercised that right would simply conduct a medical examination without interfering with any treatment prescribed by the prison or police doctors.

38. With respect to article 3 of the Convention and in view of information received that, in June 1996, 103 persons had been forced to leave the Spanish possessions of Ceuta and Melilla in questionable circumstances, he wished to know whether the law and practice concerning expulsion and the return of refugees were the same in those possessions as in mainland Spain.

39. With respect to article 10 of the Convention, he was pleased to hear about the training provided for forensic doctors and would like to see a copy of the set of rules for the examination of detainees, referred to in paragraph 23 of the report. Since education and information regarding the prohibition of torture was also important for so-called "normal" doctors, he requested written information on how that prohibition was included in the curriculum of medical students, as well as in the postgraduate education of police, prison and military doctors and, to a lesser extent, forensic doctors.

40. He was gratified by the information provided in the report in connection with article 14 of the Convention, but wished to know whether Spain had any centres for the rehabilitation of torture victims in view of the fact that they often required special care. He hoped, in that connection, that the Spanish Government would continue its commendable practice of making substantial donations to the United Nations Voluntary Fund for Victims of Torture.

41. Mrs. ILIOPOULOS-STRANGAS, having expressed her gratitude to the Government of Spain for its forthright cooperation and its recognition of the Committee's work, said she wished to know with respect to article 3 of the Convention whether the Constitution, or the new law governing the right of asylum and refugee status, referred to in paragraph 45 of the report, incorporated provisions whereby the danger of being subjected to torture constituted a ground for precluding the expulsion, return or extradition of a person to another State, particularly since, in Europe at least, the Spanish Constitution was unique in providing for its interpretation in the light of the international conventions to which Spain was a signatory.

42. Mr. ZUPANČIČ said that he supported the positive comments made by the previous speakers, but regretted that the definition of torture contained in the Spanish Penal Code did not include discrimination, coercion and intimidation in accordance with the definition in article 1 of the Convention. With respect to article 2, paragraph 2, he wished to know whether the doctrine of lesser evil could ever be invoked as a justification for torture. Furthermore, he wondered at what stage the imputation of guilt commenced in preparatory acts (actos preparatorios) of torture and at what stage they were punishable by law. He also wondered whether the Penal Code contained any general provision concerning impossible offences.

43. Concerning detention, he wished to know the usual length of pre-trial and incommunicado detention, whether early access to a lawyer was permitted

and whether cautions of the Miranda Rule type were applicable. He also wished to know the period of detention during investigation and, in particular, the post-investigation period of detention during trial.

44. In the context of paragraphs 30 and 31 of the report, he wished to know whether a person in pre-trial detention or police custody was permitted the remedy of lodging a constitutional complaint directly with the Supreme Court, even in the absence of a final judgment, and whether any case law existed to that effect.

45. Lastly, in connection with the concept of "continuing defence" referred to in paragraph 58 of the report, he wished to know whether several offences by a single perpetrator would be considered separately or merged as one. He also asked whether a Supreme Court judgment would have the status of res judicata, whether it would be considered a source of law or whether it would have the effect of ergo omnis. In the last case, the notion of "continuing offence" as set out in paragraph 58 would carry much more weight.

46. Mr. REGMI said that Spain had made significant progress in developing its legislative and judicial measures. The same did not apply, however, to its administrative measures, and its third periodic report was lacking in statistics. Moreover, since Spain's relatively new Penal Code included a definition of torture, which was deemed a punishable act, it was disheartening that acts of torture and ill-treatment were not declining, particularly those inflicted on persons suspected of terrorism by members of the Spanish security forces, who were often pardoned for such acts. It was also alarming that proof obtained under duress was not systematically rejected by the courts and that legislation permitted persons suspected of belonging to or collaborating with armed groups to be detained incommunicado for up to five days without access to a lawyer of their choice.

47. Concern regarding those matters had been voiced by CPT following its visits to Spain while, following its examination of Spain's second periodic report (CAT/C/17/Add.10), the Committee itself had expressed concern at the increase in the number of complaints of torture and ill-treatment, delays in their processing and the apparent impunity of various perpetrators of torture.

48. Lastly despite the activities of Spain's Basque separatist movement, secret organizations and anti-terrorist liberation groups, probably with high ministerial links, did not serve the cause of human rights and were not, moreover, in keeping with the provisions of article 2, paragraph 2, of the Convention.

49. Mr. CAMARA said he would like to know, in connection with article 3 of the Convention, whether Spanish legislation contained any provisions which formally prohibited the return (refoulement), expulsion or extradition of a person to a State where he would face serious risk of torture.

50. Concerning paragraph 52 of the report, which stated that there had been no new developments in connection with articles 5, 6, 7, 8 and 9 of the Convention, he presumed that the relevant information was contained in Spain's initial report (CAT/C/5/Add.21), which he had not seen. He asked, therefore,

whether, under Spanish legislation, the State was obliged to prosecute a person wanted for acts of torture who was in its territory if it decided against his extradition.

51. With respect to articles 12 and 13, he requested clarification as to whether the Spanish State was obliged to undertake a systematic investigation of all allegations of torture, irrespective of whether or not the victim had lodged a complaint. Lastly, he wondered whether Spanish legislation provided for the possibility of a torture victim initiating a prosecution against his alleged torturer.

52. Mr. YAKOVLEV said that Spain deserved high praise for the progress it had made in implementing the Convention. It was perhaps not fortuitous that its achievements in that area had gone hand in hand with economic progress and the development of democratic institutions.

53. He was concerned, however, that abuses might still be occurring in individual police stations and during encounters between interrogators and suspects. The institution of incommunicado detention was notoriously conducive to behaviour by officials that was in breach of the Convention. Although the Constitution permitted such detention and there was some form of judicial control, the Committee had noted, when considering the second periodic report of Spain (CAT/C/17/Add.10), that the law-enforcement agencies seemed to be systematically soliciting authorization for the incommunicado detention of detainees suspected of political offences and terrorist acts and that the judges were systematically granting such petitions. Under those circumstances, habeas corpus and judicial control failed to operate.

54. He asked for details of the current situation in respect of incommunicado detention and would also like to know whether action had been taken on the recommendation to prepare a code of conduct for interrogations.

55. Mr. BURNS, having complimented the Government of Spain on taking the recommendations made by international institutions so seriously, said he noted that the material on Spain received by the Committee from NGOs presented a clear picture of institutional and practical change. The Government was clearly committed to fulfilling its obligations under the human rights treaties.

56. Amnesty International asserted, however, in a report published in March 1996 that for many years the scale and frequency of pardons offered to law-enforcement officers convicted of serious crimes of torture had been of great concern. The sentences passed on officers found guilty of torture or ill-treatment were usually nominal and did not entail a period of imprisonment. In many cases it was difficult to trace with certainty whether penalties such as disqualification or dismissal had been enforced.

57. The fact was that prison sentences of less than a year and a day were customarily not enforced. He drew attention in that connection to the case of Enrique Erreguerena, a very gross case of torture for political ends, which had finally come to trial in 1997 after a delay of 15 years. The Madrid court had sentenced four police officers to three months' imprisonment and one year's suspension from duty. The victim had also been awarded one million

pesetas in damages. The duration of the prison sentence apparently meant that it would not be enforced. He would like to know, therefore, whether any of the police officers had served their prison sentences and whether they had effectively been suspended from duty, with the resultant loss of pay?

58. As Mr. Yakovlev had said, the Committee viewed incommunicado detention in police custody with particular concern and he urged the Government of Spain to reconsider its legislation in that regard.

59. It was unlikely to be mere chance that some of the most egregious and barbaric terrorist conduct had occurred at a time when the Spanish authorities were actively endeavouring to comply in full with their international human rights obligations and were thus gaining the moral high ground. He urged them to continue in the same course, not only for its intrinsic benefits but also for the political gains that accrued.

60. The CHAIRMAN invited the delegation of Spain to reply at the following meeting to the questions that had been asked.

61. The delegation of Spain withdrew.

The meeting was suspended at 12.10 p.m. and resumed at 12.20 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

62. The CHAIRMAN said that the second periodic report of Tunisia had just been received and would be taken into account when the country rapporteurs and their alternates were appointed at a subsequent meeting.

63. Subject to approval by the General Assembly of a proposal by the Commission on Human Rights, 26 June 1998 would be proclaimed international day against torture. The Committee should consider possible initiatives it might take to mark the occasion.

64. Mr. BRUNI (Secretary of the Committee) said that the contributions by Mrs. Iliopoulos-Strangas, Mr. Pikis and Mr. Zupančič concerning the issue of the implementation of the article 22 procedure in cases of alleged violation of article 3 of the Convention were not yet available in all the working languages but would be circulated to the members of the Committee as soon as possible.

65. Mr. SØRENSEN, reporting on developments in the Committee on the Rights of the Child, said that the Convention on the Rights of the Child was the biggest success in the history of the United Nations. It had been ratified by 191 States, six more than the total membership of the United Nations. Among the States that had not yet ratified the Convention were the United Arab Emirates, the United States of America and some small island States in the Pacific.

66. The Committee's workload was enormous and a large backlog of reports had already accumulated. The fact that three very experienced members had recently left the Committee made the situation worse.

67. The Committee had intensive pre-sessional meetings and was involved in numerous activities all over the world. It had contacts with the United Nations Children's Fund (UNICEF), the United Nations Educational, Cultural and Scientific Organization (UNESCO), UNAIDS, the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination. It was regrettable, therefore, that no links had as yet been forged between it and the Committee against Torture.

68. He suggested that a representative of the Committee on the Rights of the Child should be invited to attend a meeting of the Committee - or vice versa - to discuss, inter alia, the problem of street children and of child victims of torture. While he realized that the sessions of the two Committees did not often coincide, the Committee on the Rights of the Child held lengthy pre-sessional meetings and members of the Committee against Torture were present in Geneva from time to time to attend, for example, the meetings of the United Nations Voluntary Fund for Victims of Torture. There would certainly be an opportunity for them to get together.

The meeting rose at 12.45 p.m.